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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/715,992	11/16/2000	Valentino Liva	PBC.2000.5	6816
44987	7590	01/25/2005	EXAMINER	
HARRITY & SNYDER, LLP 11240 WAPLES MILL ROAD SUITE 300 FAIRFAX, VA 22030			NGUYEN, BRIAN D	
			ART UNIT	PAPER NUMBER
			2661	

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/715,992

**Applicant(s)**

LIVA ET AL.

**Examiner**

Brian D Nguyen

**Art Unit**

2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-6, 11-13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller et al (5,930,231).

Regarding claims 1 and 11-12, and 15, Miller discloses a method of transferring the contents of an information channel from a source to a destination comprising providing at the source a spectrum having a plurality of channels; selecting one of the channels, resulting in a selected channel; digitizing the spectrum, resulting in a digitized spectrum; from the digitized spectrum, isolating and translating the selected channel to baseband, resulting in a digitized channel; framing the digitized channel and associated attribute information, resulting in a framed channel; transmitting the framed channel to the destination using packet techniques over a packet network; and reconstructing a frequency and bandwidth accurate replica of the selected channel, resulting in a reconstructed replica of the selected channel at the destination (see abstract; figures 8-9; col. 7, lines 7-26; see also figure 8 and col. 14, lines 13-22 where Miller discloses the use of “frame” and “packets” for transmission).

Regarding claim 2, Miller discloses the framed channel is merged with other digital services during transmission over the network (see enhanced services in col. 6, lines 36-42).

Regarding claim 3, Miller discloses demodulating the reconstructed replica at the destination (see demodulators in figures 6 and 7).

Regarding claim 4, Miller discloses the selected channel corresponding to a telephone service (see col. 3, lines 49-59).

Regarding claims 5-6 and 13, Miller discloses the source is a subscriber and the destination is a headend (see subscriber 30 and headend 14 in figure 1).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7-9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al in view of Baum et al (6,778,525).

Regarding claims 7-9 and 14, Miller does not specifically disclose the frames are Ethernet frames using a layer 2 or layer 3 protocols. However, Ethernet frames using a layer 2 or layer 3 protocols are well known in the art. Baum discloses this feature (see col. 22, lines 4-13; col. 23, line 59-col. 24, line 5; col. 29, lines 38-42). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use layer 2 and layer 3 as taught by Baum in the system of Miller to meet the design criteria of a particular implementation.

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5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al in view of Katseff et al (6,768,722).

Regarding claim 10, Miller does not specifically disclose the plurality of channels are DOCSIS channels. However, to use standard industry protocols such as DOCSIS is a matter of choice: Katseff discloses the use of this protocol (See col. 17, line 62-65). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use DOCSIS as taught by Katseff in the system of Miller to meet the design criteria of a particular implementation.

#### ***Response to Arguments***

6. Applicant's arguments filed 9/15/04 have been fully considered but they are not persuasive.

The applicant argued that Miller does not disclosing framing a digitized channel and transmitting the framed channel over a packet network as required by claim 1. This argument is not persuasive because in figure 8, Miller discloses the use of frames, for example: frames 1-4 and framers 375a-d. In col. 14, lines 13-22, Miller clearly discloses the use of packets for transmission. Therefore, Miller clearly discloses framing a digitized channel and transmitting the framed channel over a packet network as required by claim 1. Note that the communications between the headend and the subscriber is a two-way communication; the upstream to the headend communication is described, for example, in the abstract.

#### ***Conclusion***

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7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian D Nguyen whose telephone number is (571) 272-3084. The examiner can normally be reached on 7:30-6:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Vanderpuye can be reached on (571) 272-3078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

1/22/05

A handwritten signature in black ink, appearing to read 'Brian Nguyen', with a stylized, flowing script.

**BRIAN NGUYEN**  
**PRIMARY EXAMINER**